

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5683 of 1986

with

SPECIAL CIVIL APPLICATION No 1838 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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PIARE LAL

Versus

OIL & NATURAL GAS COMMISSION

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Appearance:

1. Special Civil Application No. 5683 of 1986  
Mr. Shalin Mehta for M/S NJ MEHTA ASSO. for Petitioners  
MR RAJNI H MEHTA for Respondent No. 1, 2, 3, 4
2. Special Civil ApplicationNo 1838 of 1987  
for Petitioners  
RULE NOT RECD BACK for Respondent No. 1  
MR RAJNI H MEHTA for Respondent No. 3, 4

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CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 07/12/1999

ORAL JUDGEMENT

Both these petitions arise out of common  
question for determination and hence both the petitions

are being disposed of by this common judgment. These petitions have been filed for quashing the impugned order dated 3.10.86 and similar orders passed by the Deputy General Manager (Mechanical) , Oil and Natural Gas Corporation, Central Workshop, Baroda whereby the notional increments given to the petitioners by an order dated 13.3.80 have been withdrawn with effect from 1st April, 1979 to 31.8.86. It is also stated by the learned advocate for the petitioners that the difference of amount for notional increments for the period from 1.4.79 to 31.8.86 has also been recovered from the petitioners. This petition is also for a direction to the respondent Commission to continue to grant increments to the petitioners on the basis of the existing pay of the petitioners.

2. The petitioner no. 1 was working as a Senior High Pressure Welder and the petitioner no. 2 was working as a chargeman (Electrical) and the other petitioners were working as Assistant Engineers/Foreman, Auto, Mechanical, Electrical at the relevant time. A memo of settlement of revision of pay and allowances of the unionised categories of staff signed with the recognised union on 22.11.1979 and clause 2.1 of that memo of settlement of 1979 reads as under:

The salient features of Memorandum of Settlement date 22.11.79 are :

- i) Revised scales of pay, fitment formula, treatment to employees at maximum of scales of pay etc.
- ii) Dearness Allowance formula (no change and remains same as under Memorandum of Settlement dated 25.9.76.)
- iii) Introduction of new allowances viz. Operational Allowance and Remote Locality Allowance.
- iv) Revision in the rate of payment of Education Allowance, Field Establishment Allowance, Tea Allowance, Washing Allowance and Transport subsidy.
- v) General clauses regarding applicability and period of Settlement.

3. On the basis of that memorandum of settlement, it was decided by the respondent Commission vide office memorandum dated 15.2.80 that those employees of Central Workshop, Baroda who were in receipt of workshop allowance prior to the settlement of 1976 had been paid stagnant increment on 1.10.77 would be allowed

one notional increment at the lowest stage in the existing scale of pay on 1.4.1979 and their next increment would however be drawn on 1.10.1979. Consequently, on the office memorandum dated 15.2.1980, Annexure "D", the respondent company issued identical memorandum Annexure "E" dated 13.3.80 whereby in supersession of the office memorandum dated 17/18.12.79, the petitioner no.1 was informed that in pursuance of the memo of settlement signed by ONGC and its employees Union on 22nd December, 1979, his pay in the revised scale effective from 1.4.79 has been fixed as under:

Rs.420-10-480-12-540-15-600-20-660 as revised pay scale effective Rs.480-15-570-20-770-25-820 from 1.4.79 and similar memorandums were issued to other petitioners. The petitioner no.1 Pyarelal received the impugned order dated 3rd October 1986 at Annexure "A" issued by the Deputy General Manager (Mechanical), Central Workshop Baroda and similar orders have also been received by other petitioners whereby notional increments awarded by an order dated 13th March, 1980 has been withdrawn. The office was directed to pay as per revised pay fixation only from 1.9.96 and recovery of the amount already paid for the period from 1.4.79 to 31st August, 1986. The case has been referred to R.O., Baroda and Headquarters, Daheradun. It is pointed out by the learned advocate for the petitioners that the amount has also been subsequently recovered from all the petitioners.

4. Affidavit-in-reply has been filed by the respondent Deputy Director (P & A), Central Workshop, Oil and Natural Gas Commission, Western Region, Baroda wherein it is stated that the petitioners did not reach maximum of the pay scale with effect from 1.4.75 or 1.10.75 and they were not stagnating. The petitioners have reached maximum of the old scale on 1.10.77. Therefore, they do not fall within the purview of office memorandum dated 15.2.80 and eventhough the petitioners were not stagnating, erroneously and mistakenly stagnation increments benefits were given to them under office memorandum dated 15.2.80. Though they were not entitled to stagnation increment. The order dated 13.3.80 Annexure "E" was issued erroneously by giving benefit to the petitioner no.1 under the memo order dated 15.2.80 and his pay was fixed at Rs.790/- and not Rs.775/- instead of fixing at Rs.770/-. It is also mentioned in the affidavit that it is true that after memorandum of settlement dated 22.11.79, the petitioners were required to be given one notional increment at the rate drawn at the last stage and they were given notional increment. They were further given benefit under office

memorandum dated 15.2.80 in April, 1980 which was withdrawn. They have got over-payment which they were not entitled to. The same was withdrawn and therefore, the Commission's action was just and proper. It is further submitted that no opportunity of hearing was required to be given to correct the mistake of the commission.

5. The learned counsel for the petitioners contended that once notional increment was given to the petitioners and they have enjoyed for about 7 years, on one day, their notional increment was cancelled and withdrawn by the impugned order. The petitioners have not been issued any notice nor they have been given any opportunity to defend themselves in respect of the impugned order. The impugned order passed by the respondents is violative of principles of natural justice. He also relied on the decision in the case of Gulzar Singh vs. Sub-divisional Magistrate and another reported in 1999 (3) SCC, 107 where it is held that once a benefit has accrued to the party concerned, before cancelling or withdrawing that right, the party is required to have an opportunity to defend against the impugned order.

6. The learned advocate for the petitioners also relied on the decision of this court in the case of Gujarat State Civil Supplies Corporation Ltd. vs. Regional Provident Fund Commissioner and Ors. reported in 1999 (1) GLH,803, wherein it has been held that any authority making an order affect civil right or any person adversely is not only under an obligation to afford a fair opportunity of hearing and adopt a fair procedure, but is also under an obligation to make a speaking order, that is to say reason for his conclusions must find place in the order.

7. I have carefully considered the submissions made by the learned advocates for the parties and perused the relevant record. In the present case, by the order dated 13.3.80, the petitioners were given benefit of one notional increment and the petitioners have enjoyed that benefit for 7 years. The respondents have passed the impugned order dated 3.10.86 withdrawing notional increment given to the petitioners without issuing any notice or affording an opportunity of defending to the petitioners. In view of the decision in the case of Gujarat State Civil Supply Corporation Ltd. (supra) of this court, the authorities are required to

issue a notice affording a reasonable opportunity of hearing to the affected party before passing the impugned order withdrawing notional increments given to the petitioners. The respondents are also required to pass a speaking order for that purpose. But no speaking order has been passed. Only simple order withdrawing the increments given to the petitioners was passed by the impugned order dated 13th October, 1986. It is also a legitimate expectation of the petitioners that they have enjoyed the benefit given to them for a period of about seven years and that cannot be withdrawn without adopting a fair procedure by giving an opportunity of defending to the petitioners. From the averments made in the counter-affidavit filed on behalf of the respondents, it is clear that notional increment was given to the petitioners for which they were not entitled and the notional increments were erroneously given to the petitioners on wrong assumptions though they were not entitled for that benefit. It is also made clear that the respondents are not required to afford an opportunity of defending to the petitioners before cancelling or withdrawing the benefit given to them. As such, the facts of the petitioner are admitted by the respondents. It is also admitted that the department is not required to give any opportunity before increments given to the petitioners are cancelled or withdrawn. As such, the impugned orders passed by the authorities are in clear violation of principles of natural justice and they are liable to be set aside.

8. In view of the above discussion, the petitions deserve to be allowed and are accordingly allowed. The order dated 3.10.1986 passed by the Deputy General Manager (Mechanical), Oil and Natural Gas Commission, Central Workshop, Vadodara and similar orders withdrawing notional increments of the petitioners are hereby quashed and set aside. The respondents are further directed to refund the amount to the petitioners, if any, recovered pursuant to the order dated 3.10.1986 within three months from the date of producing a certified copy of this judgment. Rule is made absolute with no order as to costs.

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